

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John Eric Parks,

Civ. No. 09-3514 (PAM/JSM)

Plaintiff,

v.

ORDER

Department of Corrections–MCF WR/ML,
Joan Fabian, Dan Hilleren, Becky
Dooley, Sandy O’Hara, Lt. Tom Koch,
Sgt. Gerry Spiess, Lt. Paul Mikelson,
Angela Braun, David Hagemann, Tim
Strom, David Melde, Cpt. Bill Hendrickson,
Sheryl Lilya,

Defendants.

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Janie S. Mayeron dated December 14, 2009. In the R&R, Magistrate Judge Mayeron recommended that the Court dismiss four of the named Defendants for failure to state a claim against them. She further recommended that the remainder of Plaintiff’s claims be allowed to proceed. Plaintiff filed timely objections to the R&R.

According to statute, the Court must conduct a de novo review of any portion of the Magistrate Judge’s opinion to which specific objections are made. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b). Based on that de novo review, the Court adopts the R&R.

Plaintiff does not object to the dismissal of three of the four Defendants: Department of Corrections MCF WR/ML, Joan Fabian, and Dan Hilleren. He claims, however, that the

Magistrate Judge erred in recommending the dismissal of Lt. Tom Koch.

The R&R noted that the Complaint's only allegations against Lt. Koch were that he interviewed Plaintiff and told Plaintiff that he was "skillful at eluding questions." (R&R at 5.) The Complaint also claims that Lt. Koch "assisted" Defendant Angela Braun in filing a false disciplinary report against Plaintiff. (Compl. ¶ 19.) Plaintiff's objections outline more allegations against Lt. Koch, including that Lt. Koch knew that the allegations against Plaintiff were false and that he "directed the investigation in a way that was predetermined, in an effort to remove Plaintiff from the Challenge Incarceration Program" (Obj. at 1.) These allegations, however, are not included in the Complaint. The Magistrate Judge evaluated the allegations in the Complaint, as she was required to do, and determined that those allegations were insufficient to state a claim against Lt. Koch. 28 U.S.C. § 1915A. Plaintiff has failed to show that this conclusion was in error.

Should Plaintiff wish to pursue his new allegations against Lt. Koch, he must amend his Complaint to include those allegations. The Amended Complaint will be subject to pre-screening under § 1915A, and thus Plaintiff is cautioned that any amendment must allege facts which, if true, state an actionable claim to relief. (See R&R at 3, citing West v. Atkins, 487 U.S. 42, 48 (1988).)

CONCLUSION

Plaintiff has failed to show that the R&R's conclusions are incorrect. Accordingly,

IT IS HEREBY ORDERED that:

1. The Report and Recommendation (Docket No. 4) is **ADOPTED**;
2. Plaintiff's claims against Defendants Department of Corrections MCF WR/ML, Joan Fabian, Dan Hilleren, and Lt. Tom Koch are **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1915A(b); and
3. Plaintiff's claims against the remaining Defendants in the case are allowed to proceed at this time, without prejudice to any defenses that those Defendants may later seek to raise.

Dated: Wednesday, December 30, 2009

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge